

1 KRONENBERGER ROSENFIELD, LLP
2 Karl S. Kronenberger (Bar No. 226112)
3 Jeffrey M. Rosenfeld (Bar No. 222187)
4 Virginia A. Sanderson (Bar No. 240241)
5 150 Post Street, Suite 520
6 San Francisco, CA 94108
7 Telephone: (415) 955-1155
8 Facsimile: (415) 955-1158
9 karl@KRIInternetLaw.com
10 jeff@KRIInternetLaw.com
11 ginny@KRIInternetLaw.com

12 Attorneys for Plaintiffs,
13 Sidney Gordon and Jeffrey Tauber

E-filing

Filed

FEB 06 2015

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

CV 15 80057 MIS. NC

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SIDNEY GORDON, an individual; and
JEFFREY TAUBER, an individual,

Petitioners,

v.

SIGMA DESIGNS, INC., a California
corporation,

Respondent.

Misc. Case No.

Related Case No. 11-CV-9665 (JSR)
(S.D.N.Y.)

PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO COMPEL
COMPLIANCE WITH SUBPOENA TO
APPEAR FOR DEPOSITION AND
PRODUCTION OF DOCUMENTS;
REQUEST FOR EXPEDITED
TREATMENT

Date: T.B.D.
Time: T.B.D.
Ctrm: T.B.D.
Before: T.B.D.

Case No.

PLAINTIFFS' NTC OF MTN AND MTN TO
COMPEL COMPLIANCE WITH SUBPOENA

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on a date and time to be determined by the Court,
3 at the United States District Court for the Northern District of California, San Jose
4 Division, 280 S. 1st St., San Jose, CA 95113, Petitioners Sidney Gordon and Jeffrey
5 Tauber (herein referred to as "Plaintiffs") will and hereby do move for an order:

6 1. Compelling Respondent Sigma Designs, Inc. ("Sigma") to produce certain
7 highly relevant documents and designate a witness for deposition in response to a
8 subpoena validly served in the underlying action of *Gordon et al. v. Sonar Capital*
9 *Management, et al.*, Case No. 11-CV-9665 (JSR), which is presently pending in the
10 United States District Court for the Southern District of New York (the "New York Action");
11 and

12 2. Expediting hearing and decision on the instant motion.

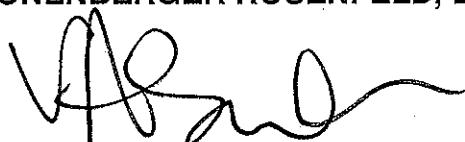
13 Plaintiffs' motion is filed in this Court pursuant to Federal Rule of Civil Procedure
14 45(d)(2)(B)(i), which requires the serving party to move the court for the District where
15 compliance is required for an order compelling said compliance. Plaintiffs' motion to
16 compel is based on this notice of motion and motion, the declaration of Brian C. Kerr in
17 support of this motion, as well as the attachments thereto, and all other papers filed and
18 proceedings held in this action. In addition, good cause exists for expedited treatment of
19 the motion as the discovery cut-off in the New York Action is February 25, 2015, trial is
20 scheduled to begin on April 27, 2015, and Sigma's refusal to comply with the subpoena
21 has already caused substantial delay and prejudice to Plaintiffs.

22

23 Respectfully submitted,

24 DATED: February 5, 2015

KRONENBERGER ROSENFIELD, LLP

25
26 By: 
27 Virginia Sanderson

28 Attorneys for Plaintiffs

Case No.

1 Plaintiffs Sidney Gordon and Jeffrey Tauber submit the following memorandum of
2 points and authorities in support of their motion to compel Respondent Sigma Designs,
3 Inc. to produce certain highly relevant documents and designate a witness for deposition
4 in response to a validly served subpoena.

5 **I. INTRODUCTION**

6 Lead Plaintiffs Sidney Gordon and Jeffrey Tauber ("Plaintiffs") respectfully move
7 for an order compelling Sigma Designs, Inc. ("Sigma") to produce certain highly relevant
8 documents and designate a witness for deposition in response to a validly served
9 subpoena ("Subpoena").

10 As detailed below, this action ("Action") is brought by Plaintiffs individually and on
11 behalf of all persons and entities who sold shares of Sigma on certain days, during the
12 period from July 13, 2007 through November 28, 2007 ("Seller Class Period"), and on
13 behalf of all persons and entities who bought shares of Sigma on certain days, during the
14 period from December 20, 2007 through March 12, 2008 ("Buyer Class Period"). Plaintiffs
15 allege that, in violation of Sections 10(b), 20A, and 20(a) of the Securities Exchange Act
16 of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, Defendants Sonar
17 Capital Management LLC ("Sonar"); Neil Druker, the CEO and primary manager of
18 Sonar; and the Sonar Hedge Funds ("Insider Trading Defendants") engaged in a massive
19 insider-trading scheme, which included trading in Sigma shares, allowing Defendants to
20 reap tens of millions of dollars in illicit profits and avoided losses.

21 Although a non-party, Sigma is the company at the center of this case, which
22 concerns insider trading by the defendants while in possession of material non-public
23 information about Sigma, and which was leaked to the Insider Trading Defendants by an
24 employee of Sigma ("Disloyal Sigma Employee"). The subpoena is narrowly tailored and
25 primarily requests documents and testimony concerning two discreet areas: (1) the
26 Disloyal Sigma Employee (i.e., the employee's identity, employment history, and any
27 related internal investigations by Sigma); and (2) the material non-public information that
28 employee disclosed (including the custodian of the information, the parties that were

1 provided with access to the information, and the flow of that information). Despite the
2 obvious relevance of this information, Sigma has refused to produce any of the
3 requested documents and testimony.

4 Prior to filing this motion, counsel for Plaintiffs contacted Sigma's counsel in an
5 effort to resolve this dispute, however, those efforts were unsuccessful. See Declaration
6 of Brian C. Kerr in Support of Plaintiffs' Expedited Motion to Compel Compliance with
7 Subpoena to Appear for Deposition and Production of Documents ("Kerr Decl.") at ¶ 9,
8 submitted herewith.

9 For these reasons, and as further set forth herein, Plaintiffs respectfully request
10 that the Court grant its motion in its entirety with such other and further relief as it deems
11 just and proper. In addition, as detailed below, the court presiding over this action has
12 ordered that discovery must be completed by February 25, 2015. Accordingly, Plaintiffs
13 request expedited treatment of this motion.

14 II. BACKGROUND

15 A. SUMMARY OF THE ALLEGATIONS

16 As detailed in the Complaint,¹ the Insider Trading Defendants maintained an
17 extensive network of sources that provided material, nonpublic information concerning
18 publicly traded companies, including Sigma. The Insider Trading Defendants routinely
19 obtained nonpublic information about Sigma – typically at the end of the quarterly
20 reporting season – in exchange for payment or other consideration to their sources.

21 One of these sources was Tai Nguyen, who was the founder, owner, president,
22 and sole employee of Insight Research, LLC ("Insight Research"), a consulting firm that
23 purported to analyze publicly traded technology companies for hedge fund managers.
24 Insight Research marketed itself as an independent research firm that provided
25 information on technology and pharmaceutical companies to hedge funds (like Sonar).

26 _____
27 ¹ The facts set forth in the Background are derived from the Third Amended Class Action
28 Complaint filed in this Action (Dkt. No. 105), a copy of the redacted version that is
publicly available is attached as Exhibit A to the Kerr. Decl.

1 Insight Research was essentially a one-person operation, however. Nguyen was the sole
2 owner and employee, and Insight Research conducted business and received payments
3 for services provided to its hedge fund clients at Nguyen's home. Prior to founding Insight
4 Research, Nguyen worked for Sigma.

5 Throughout 2006 and 2007, Nguyen repeatedly provided Sonar with material,
6 positive non-public information concerning Sigma's actual and projected financial results
7 that Nguyen had obtained from a relative who worked at Sigma. Indeed, a substantial
8 portion of the documents and testimony requested in the Subpoena concerns the identity
9 and role of Nguyen's relative who was the source of the inside information utilized by the
10 Insider Trading Defendants.

11 The inside information the Disloyal Sigma Employee provided to Nguyen, and
12 which Nguyen provided to Sonar, primarily consisted of advance quarterly revenue
13 figures. In addition, Nguyen provided inside information concerning contracts between
14 Sigma and Motorola, a telecommunications company which manufactured set-top cable
15 boxes that it sold to cable companies, for Sigma to manufacture chips that Motorola
16 incorporated into its set-top cable boxes. Depending on the period at issue, the inside
17 information regarding Sigma's order from Motorola either concerned an unexpectedly
18 large or small chip order that had a significant impact on Sigma's revenue.

19 Sonar used this inside information to purchase unlawfully Sigma shares. All told,
20 Sonar purchased more than 1,500,000 shares of Sigma while in possession of material,
21 positive non-public information concerning Sigma, and furthermore, in late 2007 and
22 early 2008, Sonar sold 150,000 shares of Sigma, and purchased put options on Sigma
23 shares, while in possession of material, negative non-public information obtained from
24 Nguyen concerning Sigma's actual and projected financial results. Through these inside
25 trades, Sonar obtained profits and avoided losses in the tens of millions from their
26 transactions in Sigma stock in late 2007 and early 2008.

27 In early 2011, both the United States Attorney's Office and United States
28 Securities and Exchange Commission ("SEC") commenced actions against the Insider

1 Trading Defendants and Defendant Freeman in connection with Sonar's insider trading
 2 scheme. Shortly thereafter, Freeman pled guilty to claims of securities fraud, conspiracy
 3 to commit securities fraud, and conspiracy to commit wire fraud.

4 **B. PROCEDURAL HISTORY**

5 This litigation was commenced by the filing of an initial complaint by Plaintiff
 6 Gordon in December 2011 (Dkt. No. 1). Thereafter, following the appointment of lead
 7 plaintiff pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"),
 8 Plaintiffs filed an Amended Class Action Complaint (Dkt. No. 39), which was dismissed
 9 without prejudice by Order entered February 8, 2013 (Dkt. No. 63), and followed by an
 10 Opinion and Order entered June 13, 2013 (Dkt. No. 76).

11 Prior to repleading, Plaintiffs settled with Defendant Freeman for \$550,000 in cash
 12 and his cooperation with the further prosecution of the case. Freeman was a former
 13 portfolio manager at Sonar who has pled guilty to criminal insider trading charges and
 14 has stated that he insider traded in Sigma shares while at Sonar. Freeman confirmed to
 15 Plaintiffs that the Disloyal Sigma Employee was an employee of Sigma during the period
 16 that Tai Nguyen provided the inside information to Sonar and that he was a relative of
 17 Nguyen. The Court approved the partial settlement, entering a Final Judgment and Order
 18 of Dismissal as to Freeman on June 7, 2013 (Dkt. No. 73).

19 On July 2, 2013, Plaintiffs filed a Second Amended Class Action Complaint (Dkt.
 20 No. 79). By Order entered November 1, 2013 (Dkt. No. 90), the Court denied
 21 Defendants' renewed motion to dismiss, which the Court explained further in its August 1,
 22 2014 Memorandum (Dkt. No. 103).

23 Upon the lifting of the PSLRA stay, Plaintiffs commenced discovery and, thus far,
 24 have secured production of approximately 18,000 pages of documents from Sonar. With
 25 leave of Court, on December 30, 2014, Plaintiffs filed their Third Amended Class Action
 26 Complaint (Dkt. No. 105).²

27 ² This complaint added claims against certain persons and entities who were investors in
 28 the Sonar Hedge Funds and redeemed their interests in those Funds or who received
 dividends or other disbursements, through liquidation or otherwise, from those Funds

1 Pursuant to the Civil Case Management Plan, so ordered by the Honorable Jed S.
2 Rakoff on December 29, 2014 (Dkt. No. 107), all discovery must be completed by
3 February 25, 2015 and the case must be ready for trial on April 21, 2015, with trial
4 scheduled to begin April 27, 2015. A copy of the Civil Case Management Plan is
5 attached as Exhibit B to the Ker Decl. Accordingly, Plaintiffs request expedited treatment
6 of this motion.

7 On or about October 3, 2014, Plaintiffs served Sigma with a subpoena ("First
8 Subpoena") requesting production of certain documents and a designee to appear for a
9 deposition to authenticate the documents produced pursuant to the subpoena. A copy of
10 the First Subpoena is attached as Exhibit C to the Ker Decl. Although the First Subpoena
11 was narrowly tailored, Sigma responded with cookie cutter objections and provided a
12 small selection of documents that appear to have been collected for earlier governmental
13 requests. A copy of the Objections and Responses of non-Party Subpoena-Recipient
14 Sigma Designs, Inc., dated October 15, 2014, which are responsive to the First
15 Subpoena, is attached as Exhibit D to the Ker Decl. These documents, which totaled
16 335 pages, were designated confidential by Sigma so they are not discussed herein.

17 After reviewing Sigma's objections, responses, and limited production in response
18 to the First Subpoena, on or about January 20, 2015, Plaintiffs served a second
19 subpoena ("Second Subpoena"), which was even more narrowly tailored and requested
20 indispensable documents and testimony focusing on the identity of the Disloyal Sigma
21 Employee (Tai Nguyen's relative) and the leaked material non-public information. A copy
22 of the Second Subpoena is attached as Exhibit E to the Ker Decl.

23 Sigma again responded with generic cookie cutter objections and failed to
24 specifically address each of the requests. Further, in response to the Second Subpoena,
25 Sigma provided no documents and inexplicably objected to each of the testimony topics
26 identified in the Second Subpoena. A copy of the Objections and Responses of non-

27 after July 1, 2007 ("Investor Defendants") to void the transfers as fraudulent under Mass.
28 Gen. Laws Ch. 109A §§ 5, 6 and as constituting unjust enrichment at the expense of
Plaintiffs and Class members.

1 Party Subpoena-Recipient Sigma Designs, Inc., dated January 28, 2015, which are
 2 responsive to the Second Subpoena, is attached as Exhibit F to the Ker Decl.

3 **III. ARGUMENT**

4 **A. THE LEGAL STANDARD**

5 Rule 45 of the Federal Rules of Civil Procedure authorizes a subpoena to be
 6 issued that commands a non-party to produce documents, electronically stored
 7 information, or tangible things in that non-party's possession, custody or control. FED. R.
 8 CIV. P. 45(a)(1)(A)(iii). “[T]he scope of discovery through a subpoena [issued under Rule
 9 45] is the same as that applicable to Rule 34 and the other discovery rules.” FED. R. CIV.
 10 P. 45 Notes of Advisory Committee on 1970 Amendments.

11 “Parties may obtain discovery regarding any nonprivileged matter that is relevant
 12 to any party's claim or defense.” FED. R. CIV. P. 26(b)(1). As one Court recently stated:

13 Relevance under Rule 26(b)(1) is construed more broadly for discovery than for
 14 trial. *Truswal Sys. Corp. v. Hydro-Air Eng'g, Inc.*, 813 F.2d 1207, 1211 (Fed. Cir.
 15 1987). Relevant information need not be admissible at the trial if the discovery
 16 appears reasonably calculated to lead to the discovery of admissible evidence.
 17 Fed. R. Civ. P. 26(b)(1). Where relevance is in doubt the court should be
 18 permissive. *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 681 (N.D. Cal. 2006).

19 *Erickson v. Microaire Surgical Instruments LLC*, No. C08-574BHS, 2010 U.S. Dist. LEXIS
 20 55838, at *4 (W.D. Wash, May 6, 2010).

21 **B. THE SUBPOENA**

22 Stated briefly, this Action concerns illegal insider trading by the Insider Trading
 23 Defendants utilizing material non-public information concerning Sigma. From about 2006
 24 through 2009, the Insider Trading Defendants received the inside information from Tai
 25 Nguyen who in turn received the information from his relative that worked at Sigma (the
 26 Disloyal Sigma Employee). The inside information relevant to this Action pertained to two
 27 general categories: (1) advance information concerning Sigma's quarterly financials; and
 28 (2) information concerning the volume of the chip orders Sigma received from Motorola, a

1 significant customer of Sigma's products.

2 The Second Subpoena seeks limited discovery focused on two discreet
3 categories: (1) the Disloyal Sigma Employee (i.e., the employee's identity, employment
4 history, and any related internal investigations by Sigma); and (2) the leaked material
5 non-public information (including the custodian of the information, the parties that were
6 provided with access to the information, and the flow of that information).

7 For example, Requests Nos. 1, 7 and 8, all concern Tai Nguyen, the tipper of the
8 inside information to Sonar and former Sigma employee, and his relatives that worked at
9 Sigma (the "Nguyens") and seek to enable Plaintiffs to identify the Disloyal Sigma
10 Employee that leaked the inside information to the Insider Trading Defendants, how that
11 leak occurred, when it occurred and which parties were involved. This information is
12 central to Plaintiffs' claims. *See Gordon v. Sonar Capital Mgmt. LLC*, 11-cv-9665 (JSR),
13 2014 U.S. Dist. LEXIS 111543, at *5 (S.D.N.Y. July 31, 2014). Similarly, Requests Nos.
14 2-6 and 9, which all concern the inside information that was leaked by the Disloyal Sigma
15 Employee to the Insider Trading Defendants, which is central to this Action, is clearly
16 relevant as it will also enable Plaintiffs to identify the Disloyal Sigma Employee (see *id.*)
17 and to provide additional evidence at trial.

18 Likewise, the testimony topics identified in the subpoenas are narrow and focus on
19 the Disloyal Sigma Employee and the leaked inside information. Such a witness is also
20 necessary to properly authenticate the limited documents Sigma has already produced
21 as well as to authenticate the documents sought by this motion.

22 For example, Topics Nos. 1 and 5 concern the Nguyens and, as explained above,
23 are necessary to enable Plaintiffs to identify the Disloyal Sigma Employee that leaked the
24 inside information to the Insider Trading Defendants, how that leak occurred, when it
25 occurred and which parties were involved. This information is central to Plaintiffs' claims,
26 and it is indispensable to this Action. Topics Nos. 2-4 concern the inside information that
27 was leaked to the Insider Trading Defendants, and, as explained above, form the heart of
28 this Action, are self-evidently relevant, and will also enable Plaintiffs to identify the



1 Disloyal Sigma Employee.

2 Moreover, with respect to the requests concerning the Disloyal Sigma Employee,
3 the Subpoena limits the relevant time frame to about the window during which the illegal
4 insider trading took place (i.e. 2006-2010). The only exception to that is the requested
5 information concerning Tai Nguyen, which includes no time limit, but is nevertheless
6 narrowly focused on one highly relevant individual. However, with respect to the leaked
7 inside information, the time frame is even more narrow. The requested information
8 concerning the leaked Motorola information is limited to the two year period between
9 June 2006 and June 2008 and the information concerning the leaked financial
10 information is relates to information that spans approximately one and a half years (i.e.
11 the financial information released between November 2006 and March 2008).

12 **C. SIGMA'S GENERIC OBJECTIONS LACK MERIT**

13 Despite the relevance of this information and its limited time frame, Sigma has
14 furnished boilerplate objections and responses to the Subpoena and has refused to
15 produce any of the requested documents and designate a representative to appear at a
16 deposition.

17 Without specifically identifying which of Plaintiffs' requests it is responding to,
18 Sigma objects that the time, place, and manner specified for production would impose
19 undue burden and expense on Sigma. This objection should be rejected. Sigma's offices
20 are located at 1778 McCarthy Blvd, Milpitas, CA 95035, which is the same location where
21 Sigma was served with the Subpoena. The place designated for service is Quest
22 Discovery Services, which is located at 981 Ridder Park Drive, San Jose, CA 95131.
23 According to Google Maps, the distance between the two locations is approximately 2.6
24 miles. This distance is significantly less than the 100 mile distance allowable pursuant to
25 FED. R. CIV. P. 45(c).

26 Sigma also objects that the Subpoena is not reasonably calculated to lead to the
27 discovery of admissible evidence and requests information available from other sources.
28 First, Sigma has not identified which of the requests this is directed toward. More

1 significantly, even with respect to each of Plaintiffs' requests, this objection is belied by
2 the fact that, as demonstrated above, Plaintiffs have purposely crafted their requests as
3 narrowly as possible and limited them to relevant and necessary documents essential to
4 this Action.

5 Sigma's remaining objections, including that the documents requested contain
6 confidential and proprietary information including some to which Sigma may be under an
7 obligation of confidentiality and that the document request seeks production of materials
8 protected by the attorney-client privilege, work product immunity, or any other applicable
9 privilege or protection are also untenable. There is already a confidentiality order in place
10 in the Action, which was sent to Sigma and was used for its initial production [consider
11 attaching?]. Moreover, Sigma has failed to identify which requests these objections apply
12 to, has couched its objection based on confidentiality in tentative terms and failed to
13 provide a privilege log of the "privileged or protected" documents. Indeed, based on
14 Sigma's response, it is impossible to know whether Sigma has the requested documents
15 but is electing to withhold them, or whether no documents exist that are responsive to the
16 requests.

17 Based on the foregoing, it is clear that Plaintiffs' Subpoena is highly focused and
18 appropriately limited in scope and breadth, and Sigma's objections lack merit.

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

IV. CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court hear this motion on an expedited basis and compel Sigma to produce the documents responsive to the Subpoena and designate a witness to provide deposition testimony on the topics set forth therein.

Respectfully Submitted,

DATED: February 5, 2015

KRONENBERGER ROSENFIELD, LLP

By: W.H.

Attorneys for Plaintiffs